

REMARKS

The following remarks and the above amendments are submitted to address all issues in this case, and to put this case in condition for allowance. Applicant amends the claims in this case solely to better define the subject matter of the present invention, to correct typographical errors, and to place certain claims in independent form. No new matter is added in these amendments. The new claims are supported by disclosure in the specification and by the figures. After the above amendment, claims 2-22 are pending in the application. Claims 7, 10, 12, 15, and 16 are independent.

Applicants have studied the Office Action Mailed February 21, 2002 and have the following remarks.

35 U.S.C. §112

The Examiner objected to claims 16-20 under 35 U.S.C. §112 second paragraph. Independent claim 16 has been amended to include: “at least two shoulder straps attached to said pack, said shoulder straps enabling a user to carry said pack on their back.” Applicant respectfully submits that shoulder straps provide structure enabling the baggage to be used as a backpack. Claims 17-20 are dependent on claim 16 and it is believed the correction of claim 16 responds to the Examiner’s objections thereto.

It is therefore believed that the claims, as amended, are allowable with regards to 35 U.S.C. §112 and Applicant respectfully requests the Examiner’s withdrawal of that rejection.

35 U.S.C. § 102 and §103

Mao

The Examiner rejected prosecution claims 1-20 based on 35 U.S.C. §102(e) as anticipated by Mao (United States Patent No. 6,279,706). A Declaration Under Rule 131 is submitted herewith to swear behind Mao. Applicant respectfully contends that the attached declaration eliminates Mao from consideration as a reference and moots the Examiner's rejection to prosecution claims 1-20 thereover.

Applicant notes that prosecution claims 7-8, 12-13, 15, and 19-20 were only rejected in light of Mao. Claims 7, 12 and 15 have been amended to place these claims in independent form and amended claims 2-6, 8-9, and 13 depend therefrom. Therefore Applicant respectfully requests the Examiner's rejection of claims 1-9, 12-13, and 15 be withdrawn and they be allowed to continue to issuance.

Miyoshi

The Examiner rejected claims 10 and 14 under 35 U.S.C. §102(b) as anticipated by Miyoshi (5,908,093). Independent claim 10, as amended, upon which claim 14 depends recites "a towing handle attached to the pack by a curved, telescoping member, the telescoping member allowing the handle to be selectively extended from the pack and retracted back toward the pack along an arcuate path curved away from the pack." Applicant respectfully contends that Miyoshi does not show a towing handle retracted back toward the pack along an arcuate path curved away from the pack. Miyoshi shows a towing handle on an arcuate path curved toward (over) the pack. As discussed in Miyoshi, the grip when extended "is positioned at the middle of the bag upper face between the right and left sides of the bag body" (Col. 4, ll. 55-57) or above the bag. It is clear from FIGS. 5 and 6 of Miyoshi that the extensible member is curved toward the bag body. The telescoping arcuate member of prosecution claim 10 instead contemplates that the

position of the handle [Miyoshi's grip] when extended is not above the bag as the telescoping member is curved away from the pack

Since Miyoshi fails to disclose an element of independent claim 10, as amended, and claims 11, 14, 21, and 22, depend from claim 10, Applicant respectfully submits that Miyoshi cannot anticipate these amended claims and respectfully asks the Examiner to withdraw the rejection based on 35 U.S.C. §102.

Liang

The Examiner rejected claims 1-6 and 9-11 under 35 U.S.C. §102(b) as anticipated by Liang (5,464,080).

Applicants respectfully note that claim 1 has been cancelled and claims 2-6 and 9 now depend from claim 7. Claim 7 recites "a resiliently flexible backing sheet attached to the towing member for movement of the backing sheet with the towing member relative to the base, the backing sheet also being attached to the pack." Applicant contends that Liang shows no such structure and therefore cannot anticipate claims 2-6 and 9 mooted the Examiner's rejection of those claims.

With regards to claims 10-11, claim 11 is dependent on claim 10. As discussed above, claim 10, as amended, recites "a towing handle attached to the pack by a curved, telescoping member, the telescoping member allowing the handle to be selectively extended from the pack and retracted back toward the pack along an arcuate path curved away from the pack" [emphasis added]. Applicant respectfully contends that this structure is not shown in the disclosure of Liang. The Examiner stated: "Regarding claim 10, the path for the two telescoping portion 56 and 54 is curved due to its roundness in cross-section." Applicant traverses this argument in that roundness in cross-section does not and cannot show an extension or retraction of a handle along

an “arcuate path curved away from the pack” and is completely irrelevant in determining the path of a handle. The shape of an extensible structure in cross-section does not and cannot define its path of extension. A structure of any cross-sectional shape (including those not “curved” in cross-section) could extend via an arcuate path as the shape does not affect the path of motion. Therefore the cross-sectional shape cannot be used to describe the path of motion. The Examiner’s statement that the cross-sectional shape is curved has no relevance to the path of motion being arcuate.

The extension path of Liang is clearly a linear path (See FIGS. 1 and 6) of extension as the handle extends linearly. No where in the Liang reference is an arcuate path of extension referred to. Claim 10, as amended, of the instant application, specifically recites an “arcuate path” as the path of extension. Therefore, Applicant respectfully contends that the disclosure of Liang does not anticipate independent claim 10, and claims 11, 14, 21, and 22 which depend therefrom are also not anticipated by Liang.

Based on the above remarks, Applicant contends that claims 1-15 and 21-22 are allowable under 35 U.S.C. §102 and respectfully requests that the Examiner withdraw his rejection thereto. Further Applicant contends that claims 1-15 and 21-22 are also allowable under 35 U.S.C. §103 as none of the above references, either alone or in any combination, show the structure as described and claimed in these claims and no other references were cited by the Examiner with regards to these claims.

Sadow and Wulf

The Examiner rejected claims 16-18 under 35 U.S.C. §103 as anticipated by Sadow (6,298,964) or alternatively as obvious over Sadow in view of Wulf et. al. (5,749,503).

Applicant respectfully contends that independent claim 16, as amended, upon which claims 17-20 depend, is neither anticipated nor obvious in light of these two references.

Claim 16, as amended, recites “a pack constructed of a flexible material, the flexible material enclosing a hollow interior of the pack; at least two shoulder straps attached to said pack, said shoulder strap enabling a user to carry said pack on their back; a rigid base attached to a bottom of the pack; and a backing sheet attached to a side of the pack that rests against the user’s back when the piece of baggage is worn as a backpack, the backing sheet and the rigid base being twistable relative to each other.”

Applicant first contends that Sadow does not disclose at least two shoulder straps, the shoulder straps enabling a user to carry said pack on their pack. While Sadow discloses a single shoulder strap, it does not disclose two and the single shoulder strap of Sadow further does not enable a user to carry the bag of Sadow on their back. Therefore Sadow does not anticipate the above claim as amended.

Further, Applicant traverses the rejection that the combination of Sadow and Wulf disclose the baggage of claim 16. Claim 16, as amended, recites “the backing sheet and the rigid base being twistable relative to each other.” As discussed on page 6 of the instant application “the preferred embodiment of. . .the invention comprises a pivotal connection between a rigid base portion of the backpack and an extendable towing member upon which an internal supporting backing sheet is attached. The pivotal connection allows the backing sheet to twist relative to his or her [the user] hips when the backpack is worn” [emphasis added]. The combination of Sadow and Wulf proposed by the Examiner cannot twist. The panel of Sadow bends downward away from the pack which is not a twisting motion.

Applicant further contends that even if the Examiner maintains the rejection of claim 16, claims 17-20 are allowable over the combination. Claim 17 recites that “the backing sheet has a contoured surface that conforms to a user’s back when the piece of baggage is worn as a backpack.” The Examiner contends that brackets 105 or 45-2 show the contoured surface. Applicant respectfully disagrees and argues that the brackets show no such contoured surface in the FIGS and no such surface is even contemplated by Sadow. The brackets of Sadow are for securing the handle assembly, no structure with regarded to the contour of their surface is discussed. Further, as the Sadow reference never contemplates his baggage being carried on the back as a backpack, Sadow would have no reason to make the brackets so contoured.

Claim 18 recites “the backing sheet is attached to the single-pole towing member for pivoting movement of the backing sheet about the single pole member.” The Examiner stated that Sadow showed a single pole unit (which Applicant will not address), but made no reference to the above limitation of pivoting movement. Clearly the brackets 105 and/or 45-2 of Sadow do not allow for pivoting movement about the single pole member as the purpose of the brackets is to hold the handle assembly of Sadow in place.

Claims 19-20 do not currently stand rejected in light of the combination and are believed allowable thereover.

Applicant therefore respectfully submits that Independent claim 16 is allowable over Sadow and/or Sadow in conjunction with Wulf, and claims 17-20 which depend therefrom are also so allowable. Applicant therefore respectfully requests that the Examiner withdraw his rejection under 35 U.S.C. §103 and allow this case to pass to issue.

Conclusion

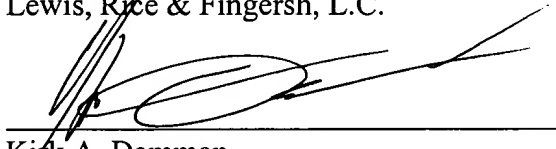
In light of the above, Applicant respectfully requests entrance of the above amendment and allowance of all pending claims so that this case can pass on to issue.

As a final point, a check and fee calculation sheet is included for the additional claim fees and for the additional independent claims. There is also included herewith a petition for a two month extension of time and the associated petition fee and a Declaration under Rule 131. It is believed no other fees are due in conjunction with this filing; however, the Commissioner is authorized to credit any overpayment or charge any deficiencies necessary for entering this amendment, including any claims fees and/or extension fees to/from our **Deposit Account No. 50-0975**.

If, however, any questions remain, Applicants respectfully request a telephone call to the below-signed attorney at (314) 444-7783.

Respectfully submitted,
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Marked up Version of Claims:

1. (Cancelled)
2. (Amended) The piece of baggage of claim 7 [1], wherein:

the towing member is connected to the base for pivoting movement of the towing member in a multiple of planes relative to the base.
4. (Amended) The piece of baggage of claim 7 [1], wherein:

the towing member is curved and is connected to the base intermediate the at least two wheels.
5. (Amended) The piece of baggage of claim 7 [1], wherein:

the towing member is comprised of at least two portions that telescope so as to allow the towing member to extend and retract in a telescoping manner.
7. (Amended) A piece of baggage comprising:

a pack constructed of flexible material, the flexible material enclosing a hollow interior of the pack;

a rigid base attached to the pack;

at least two wheels mounted for rotation to the rigid base;

a rigid towing member operatively connected to the base for pivoting movement of the towing member relative to the base; and [The piece of baggage of claim 1, further comprising:]

a resiliently flexible backing sheet attached to the towing member for movement of the backing sheet with the towing member relative to the base, the backing sheet also being attached to the pack.

9. (Amended) The piece of baggage of claim 7 [1], wherein:

the extendable towing member is comprised of a single-pole telescoping member.

10. (Amended) A piece of baggage comprising:

a pack for receiving and carrying objects;

at least two wheels mounted for rotation on the pack and for supporting the pack when the pack is being towed; and

a towing handle attached to the pack by a curved, telescoping member, the telescoping member allowing the handle to be selectively extended from the pack and retracted back toward the pack along an arcuate path curved away from [relative to] the pack.

12. (Amended) A piece of baggage which may be worn on the back comprising:

a pack for receiving and carrying objects;

at least two wheels mounted for rotation on the pack and for supporting the pack when the pack is being towed;

a towing handle attached to the pack by a curved, telescoping member, the telescoping member allowing the handle to be selectively extended from the pack and retracted back toward the pack along an arcuate path relative to the pack, the towing handle being attached to a single-pole, telescoping member comprised of a non-extending portion and at least one extending

portion slideably attached to the non-extending portion for relative telescoping movement of the non-extending portion and the extending portion; and

[The piece of baggage of claim 11 can be used as a backpack and as a hand towed piece of baggage, the piece of baggage further comprising:] a resiliently flexible backing sheet attached to the non-extending portion of the telescoping member, the backing sheet being positioned between the non-extending portion of the telescoping member and a side the pack that rests against a person's back when the pack is worn as a backpack, the backing sheet also being attached to the side of pack.

15. (Amended) A piece of baggage comprising:

a pack for receiving and carrying objects;

at least two wheels mounted for rotation on the pack and for supporting the pack when the pack is being towed;

a towing handle attached to the pack by a curved, telescoping member, the telescoping member allowing the handle to be selectively extended from the pack and retracted back toward the pack along an arcuate path relative to the pack; and

the at least two wheels have a common axis and the telescoping member is operatively attached to the pack in a manner that allows the telescoping member to pivot relative to the axis of the wheels;

wherein, [The piece of baggage of claim 14, wherein:] the at least two wheels are mounted on a rigid base of the pack and the telescoping member is pivotally attached to the rigid base.

16. (Amended) A piece of baggage for use as a backpack, the piece of baggage comprising:
a [back]pack constructed of a flexible material, the flexible material enclosing a hollow interior of the pack;

at least two shoulder straps attached to said pack, said shoulder strap enabling a user to carry said pack on their back;

a rigid base attached to a bottom of the pack; and

a backing sheet attached to a side of the pack that rests against the [a] user's back when the piece of baggage is worn as a backpack, the backing sheet and the rigid base being twistable [moveable] relative to each other.

18. (Amended) The piece of baggage of claim 16 can be used as a backpack and as a hand towed piece of baggage, the piece of baggage further comprising:

at least two wheels mounted for rotation to the rigid base;

a single-pole towing member operatively connected to the rigid base intermediate the at least two wheels; and

the backing sheet is attached to the single-pole towing member for pivoting movement of the backing sheet about the single pole member.

21. (New) The piece of baggage of claim 11 can be used as a backpack and as a hand towed piece of baggage, the piece of baggage further comprising:

a resiliently flexible backing sheet attached to the non-extending portion of the telescoping member, the backing sheet being positioned between the non-extending portion of

the telescoping member and a side the pack that rests against a person's back when the pack is worn as a backpack, the backing sheet also being attached to the side of the pack.

22. (New) The piece of baggage of claim 21, wherein:

the backing sheet is attached to the non-extending portion of the telescoping member in a manner that allows the backing sheet to pivot about the non-extending portion of the telescoping member.